IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1664 OF 1998

Mr. Shashikant Khandekar & anr. ..Petitioners.

Vs.

Airline Financial Support
Services (I) Pvt. Ltd. & Ors. ..Respondents.

....

Mr. J.P. Cama i/b Mr. K.P. Anil Kumar for the Petitioners.

Mr. Sanjay Udeshi for Respondent No.1.

Mr. H.V. Mehta for Respondent No.2.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

28th January, 2005.

P.C. :

1. By the impugned order dated 7th July, 1998 the Regional Provident Fund Commissioner rejected the application filed by the First Respondent for an exemption in pursuance of paragraph 39 of the Employees Pension Scheme 1995. Under paragraph 39 of the scheme, it has been provided that the appropriate government may grant an exemption to

any establishment or class of establishments from the operation of the scheme if the employees of the establishment are either members of any other pension scheme or proposed to be members of the pension scheme wherein the pensionary benefits are at par or more favourable than the benefits provided under the scheme. An application for exemption under paragraph 39 has to be presented to the Regional Provident Fund Commissioner having jurisdiction over the establishment together with a copy of the pension scheme of the establishment and other relevant documents as may be called for by him. On receipt of such an application, the Regional Provident Fund Commissioner is required to scrutinize the application, obtain the recommendations of the Central Provident Fund Commissioner and submit the same to the appropriate government for decision. The power to grant an exemption vests with the appropriate government. The aforesaid provisions were inserted by a gazette notification dated 27th September, 2001.

2. In the present case from the documents annexed to the Petition it would appear that in pursuance to the application that was moved by the First Respondent, the Regional Provident Fund Commissioner had called for certain information and

clarifications. According to the Petitioners who are two employees of the First Respondent, the First Respondent had submited replies to those clarifications and that the Regional Provident Fund Commissioner was not acting within the scope of his jurisdiction in rejecting the application for exemption. The validity of the Employees Pension Scheme 1952, it must be noted, has been upheld by the Supreme Court by a judgment delivered on 11th November, 2003 in Otis Elevator Employees' Union S. Reg. v. Union of India (Special Leave Petition (C) No.22316 of 1997). Counsel appearing on behalf of the Regional Provident Fund Commissioner states that if the First Respondent submits a fresh application or additional material in support of the earlier application, the Regional Provident Fund Commissioner shall consider the application for exemption in accordance with law more particularly paragraph 39 of the Employees Pension Scheme 1952. In the circumstances, the Petition is disposed of taking on record the statement which was made on behalf of the Second Respondent and since no other point on merits is pressed in view of the statement at this stage. All the rights and contentions of the parties are kept open. In the meantime, in the event that the First Respondent files a fresh application within a

period of three weeks from today, the ad interim order passed by this Court on

8th October, 1998 shall continue to remain in force until the application for the grant of an exemption under paragraph 39 of the Employees Pension Scheme 1952 is heard and disposed of.

Counsel appearing on behalf of the Second Respondent states that a copy of the order that would be passed on the application for exemption shall be duly communicated to the First Respondent.